

**Correctional Medical Systems, Inc. and
OCSEA/American Federation of State, County
and Municipal Employees, AFL-CIO Local 11,
Petitioner.** Case 8-RC-14988

September 19, 1994

**DECISION AND CERTIFICATION OF
REPRESENTATIVE**

BY CHAIRMAN GOULD AND MEMBERS STEPHENS
AND DEVANEY

The National Labor Relations Board, by a three-member panel, has considered objections to an election held January 14, 1994, and the Regional Director's report recommending disposition of them. The election was conducted pursuant to a Stipulated Election Agreement. The tally of ballots shows 10 for and 6 against the Petitioner, with 2 challenged ballots, an insufficient number to affect the results.

The Board has reviewed the record in light of the exceptions and briefs, has adopted the Regional Director's findings and recommendations,¹ and finds that a certification of representative should be issued.

CERTIFICATION OF REPRESENTATIVE

IT IS CERTIFIED that a majority of the valid ballots have been cast for OCSEA/American Federation of State, County and Municipal Employees, AFL-CIO

¹ In its exceptions, the Employer contends, inter alia, that the Regional Director erred in finding that its objections were untimely filed because the Martin Luther King holiday, which fell 3 days after the election, should have extended the filing deadline. We find no merit in this contention. Sec. 102.111(a) of the Board's Rules and Regulations provides that when a filing period is 7 days in length, as here, intermediate Saturdays, Sundays, and holidays are included in the computation and that filing periods are extended to the next working day only if the last day of the filing period falls on a weekend or a holiday. *Goody's Family Clothing*, 308 NLRB 181 (1992).

Local 11 and that it is the exclusive collective-bargaining representative of the employees in the following appropriate unit:

All full-time and regular part-time employees including PRN (on-call) employees, registered nurses, licensed practical nurses, medical records clerk, x-ray technician, and dental technician employed by the Employer in the health care unit located at Trumbull Correctional Institute located in Leavittsburg, Ohio, but excluding all office clerical employees, guards and supervisors as defined in the Act and all other employees.

MEMBER DEVANEY, concurring and dissenting.

Contrary to the Regional Director, I would accept the Employer's objection as timely filed. As I indicated in *Goody's Family Clothing*, 308 NLRB 181, 182 (1992), I believe when a holiday occurs during the first 6 days of a 7-day filing period, parties should be accorded the full time period, as they are when the holiday falls on the seventh day. The Regional Director's approach fails to accord the parties that full time period and accordingly it is an approach I reject. See also *John I. Haas, Inc.*, 301 NLRB 300, 301 fn. 6 (second par.) (1991).

However, I agree with the Regional Director's recommended overruling of the Employer's objection on its merits. As employee Yannerella's discharge was the subject of a pending charge alleging that the discharge violated the Act, he was eligible to serve as an observer in the election. *Kellwood Co.*, 299 NLRB 1026 (1990). Contrary to the Employer's argument, the fact that the election was pursuant to a stipulated agreement, rather than as a directed election, does not call for a different result. See *Kellwood*, supra at 1029, 1033.